FROM INVESTMENT PROTECTION TO INVESTMENT FACILITATION: A NEW PARADIGM IN THE PURSUIT OF SUSTAINABLE DEVELOPMENT

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Abstract

Over the past decade, international investment agreements (IIAs) have undergone significant reforms, addressing longstanding concerns within the investment treaty regime and marking a shift from traditional protectionist models to frameworks emphasizing investment promotion and facilitation. This evolution seeks to mitigate regulatory chill, attract and retain investment, and enable governments to implement policies that support sustainable development. Nonetheless, doubts remain as to their effectiveness in achieving concrete sustainable development outcomes. International investment law is also witnessing a rise in standalone Investment Facilitation Agreements (IFAs), such as the World Trade Organization's Investment Facilitation for Development Agreement and the European Union–Angola Sustainable Investment Facilitation Agreement (EU-Angola SIFA). Unlike traditional IIAs, IFAs aim at improving host States' investment climate by prioritizing transparency, streamlining procedures, stakeholders dialogue, and inter-State cooperation. The EU–Angola SIFA sets a precedent for this new approach, expressly focused on sustainability and serves as a model for future EU cooperation frameworks. By examining this approach, this paper seeks to contribute to discussions on the evolution of international investment law in ways that better align with sustainable development objectives.

Keywords: *sustainable development, investment facilitation, investment protection, investment treaty regime, ISDS reforms, EU-Angola Sustainable Investment Facilitation Agreement (SIFA), ASEAN*

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Over the past decade, international investment agreements (IIAs) have undergone significant reforms, responding to the investment treaty regime crisis and shifting from a protection-focused model to one that increasingly emphasizes investment promotion and facilitation. This evolution seeks to mitigate regulatory chill, attract and retain investment, and enable policies that support sustainable development and the green transition. Yet, despite the incorporation of sustainability-related language inspired by the United Nations Sustainable Development Goals (UN SDGs) and stronger "right to regulate" provisions, doubts still persist as to their effectiveness in achieving concrete sustainable development outcomes.[1]

Parallel to this trend, international investment law has witnessed the rise of standalone Investment Facilitation Agreements (IFAs), such as the World Trade Organization (WTO)'s Investment Facilitation for Development

1 Marcoux, J.-M. (2025). The concept of sustainable development in investment arbitration: A disconnect from investment policymaking and international adjudication. *Leiden Journal of International Law*, *38*(3), 501–526. doi:10.1017/S0922156524000499

Agreement (IFDA) and the European Union–Angola Sustainable Investment Facilitation Agreement (EU-Angola SIFA).[2] Unlike protection-focused IIAs, IFAs introduce a new approach centered on inter-State cooperation, transparency, and the preservation of States' policy space. Although both instruments operate within a State's broader investment governance policy, they serve different functions and therefore have distinct scopes. Accordingly, major IFAs expressly rule out any interactions or cross-interpretations with existing investment protection agreements.[3] Building on this distinction, this paper positions a new paradigm in international investment law marked by a shift from protection-centric treaties to facilitation-oriented instruments that embed sustainable development as a central normative rationale.

This paradigm shift also coincides with broader geopolitical dynamics, including global efforts to reduce reliance on China and to diversify supply chains for critical raw materials (CRMs) and rare earth elements (REEs), essential to the digital and green transitions. While this paper does not focus on supply-chain governance, it is important to recognize that SIFAs may advance both sustainability and strategic objectives.[4]

This paper first clarifies some key historical and terminological points, before highlighting the shortcomings of new IIAs integrating sustainability provisions in effectively contributing to sustainable development. It then assesses the potential of IFAs to advance sustainable development through their cooperative framework. Finally, it explores the EU-Angola SIFA as a blueprint for potential future agreements, including with the Association of Southeast Asian Nations (ASEAN) and/or its Member States. To conclude, the paper examines how IFAs could impact international investment law and policymaking more generally and evaluates whether they meaningfully rebalance the traditional power asymmetries between contracting parties.

2 It is important to note that Brazil has been a leading country in the field of investment cooperation and facilitation since the mid-2010s, as evidenced by its Cooperation and Facilitation Investment Agreements (CFIAs), such as the Brazil-Mozambique CFIA and the Brazil-Angola CFIA of 2015. However, Brazil is a unique case, having never ratified traditional bilateral investment treaties like many other countries did in the late 1980s and 1990s. Therefore, the focus here will primarily be on new investment facilitation agreements that reflect the emerging practices of countries that have adopted traditional IIAs.

3 Article 2 of Sustainable Investment Facilitation Agreement between the European Union and the Republic of Angola, September 2024 (OJ L 2024/830) (EU-Angola SIFA); Articles 2 and 4 of the 2024 World Trade Organization Agreement on Investment Facilitation for Development (IFD).

4 Indeed, concluding the EU-Angola SIFA serves several objectives, notably supporting Angola's efforts to diversify its economy beyond its oil sector, but also strengthening the EU's own strategic autonomy by ensuring a more secure and resilient resources supply chains. See Euronews. (2024, September 2). *EU eyes access to critical raw materials in Angola investment deal.* https://www.euronews.com/green/2024/09/02/eu-eyes-access-to-critical-raw-materials-in-angola-investment-deal; Andreotti, N. (2024). Is EU investment policy fit for promoting sustainable development? Insights from the EU–Angola SIFA. European Papers, 9(1), 229–245. https://doi.org/10.15166/2499-8249/754, p. 230. In fact, one cannot ignore the timing of the adoption of the EU's Critical Raw Materials Act (CRMA), in force since May 2024, which aims at making the EU's supply of CRMs more secure, resilient and sustainable. The CRMA lists 34 CRMs, of which 17 are considered strategic (SRMs). The act further sets several non-binding targets in terms of extraction, processing, refining, and recycling of CRMs as well as importation from third countries. See Article 1–4 and Recital 55 of the Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials.

1. Historical and terminological overview

1.1. Investment protection, promotion, and facilitation: distinctions and convergence

The investment law regime has traditionally been associated with the protection of foreign direct investment (FDI). These treaties are widely recognized for their role in encouraging and attracting investment, especially into developing countries, by granting foreign investors a wide range of substantive and procedural protections, with the objective of boosting host countries' economic development. This network of bilateral investment treaties (BITs) has since given rise to a large wave of investor-State dispute settlement (ISDS) cases.

Amid growing criticism of ISDS, investment facilitation has gradually been incorporated into IIAs and the broader investment regulatory framework. In fact, many do not clearly distinguish between investment promotion and facilitation, even though the two concepts are different.[5] While promotion focuses on attracting new investors by showcasing a country's advantages as an investment destination compared to others,[6] facilitation, by contrast, supports new and existing investors from the pre-establishment phase onward. Investment facilitation, therefore, aims not only to attract investments but also to retain them by providing a transparent, efficient, and predictable policy and regulatory framework.[7] This process typically includes a combination of tools, policies, and actions that ease and improve overall business environment conditions.[8] The trend has not only shifted towards investment promotion and facilitation, but also towards investment facilitation for sustainable development - namely, attracting, retaining, and, most importantly, channeling investments into sustainability-related projects.[9]

1.2. Sustainable development and investment law

The concept of sustainable development has also been extensively discussed in the investment law regime over the past decade. It is a concept that is unclearly defined but commonly traced back to the 1987 Brundtland

5 OECD. (2015). *Policy framework for investment* (p. 39). OECD Publishing. https://doi.org/10.1787/9789264208667-en. See, for example, Article 43 of the Indonesia-Switzerland BIT of 2022.

6 Hees, F., & da Rocha Paranhos, P. B. (Year). Investment facilitation: Moving beyond investment promotion. *Columbia FDI Perspectives*, No. 228. Columbia Center on Sustainable Investment. For the distinction in IIAs provisions, see, for example, Australia-United Arab Emirates Comprehensive Economic Partnership Agreement (CEPA) of 2024, Chapter 11 on Investment Facilitation, particularly Article 11.2 (Promotion of Investment) and Article 11.3 (Facilitation of Investment).

7 OECD. (2018). *Towards an international framework for investment facilitation*. https://www.oecd.org/content/dam/oecd/en/publications/reports/2018/04/towards-an-international-framework-for-investment-facilitation_5e5343dc/b82771dc-en.pdf. For further discussion and definitions, see OECD. *Investment incentives, promotion and facilitation*. https://www.oecd.org/en/topics/investment-incentives-promotion-and-facilitation.html

8 UNCTAD defines Investment Facilitation as "the set of policies and actions aimed at making it easier for investors to establish and expand their investments, as well as to conduct their day-to-day business in host countries." United Nations Conference on Trade and Development. (2017). *Investment facilitation: A review of policy practices. Follow-up to UNCTAD's global action menu for investment facilitation*. https://investmentpolicy.unctad.org/uploaded-files/document/Action%20Menu%2023-05-2017_7pm_print.pdf; OECD. (2018), *supra* note 7, p. 5.

9 OECD. (2018), *supra* note 7, p. 5.

Report of the World Commission on Environment and Development.[10] While the Report does not provide a definition, it indicates what pursuing sustainable development entails and what the limits to achieving it are. Notably, it emphasizes the guiding principle that ensuring sustainable development requires meeting "the needs of the present without compromising the ability of future generations to meet their own needs."[11] The concept has since gained legal relevance in the international sphere through landmark cases such as the *Gabcikovo-Nagymaros* case at the International Court of Justice (ICJ),[12] before becoming central to the Paris Agreement[13] and the core concept of the UN 2030 Agenda, both adopted in 2015.[14] In the meantime, major international organizations, such as the UN Conference on Trade and Development (UNCTAD)[15] and the Organisation for Economic Cooperation and Development (OECD)[16] have progressively mainstreamed sustainability in international investment policies and agreements.[17]

2. Limitations of the sustainability provisions in new international investment agreements

Recent IIAs have sought to address the legitimacy crisis triggered by the ISDS cases against developing countries, particularly in sensitive sectors such as public health, environment protection, and natural resources management. As a result, many countries have grown resistant to compromising on their regulatory autonomy, prompting a shift that ranges from a complete rejection and withdrawal from the system to gradual reform efforts. These include adopting new IIAs that enhance the contracting parties' investment promotion and facilitation measures,[18] as well as incorporating provisions

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10 World Commission on Environment and Development. (1987). *Our common future*. United Nations. https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf; European Union. *Sustainable development* [Glossary entry]. EUR-Lex. https://eur-lex.europa.eu/EN/legal-content/glossary/sustainable-development.html

11 *Ibid*.

12 *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia), Judgment, Separate Opinion of Vice-President Weeramantry, ICJ Reports 1997, Sept. 25.

13 United Nations. (2015). *Paris Agreement*. United Nations Treaty Collection. https://unfccc.int/sites/default/files/english_paris_agreement.pdf

14 United Nations. *The Sustainable development agenda*. https://www.un.org/sustainabledevelopment/development-agenda/

15 UNCTAD. (2015). *Investment policy framework for sustainable development*. https://unctad.org/system/files/official-document/diaepcb2015d5_en.pdf

16 OECD. (n.d). *OECD publications on investment*. https://www.oecd.org/en/topics/policy-issues/investment.html#related-publications

17 Fauchald, O. K. (2025). Facilitation of foreign direct investment through international economic law: Contribution to the right to development and SDGs, p. 178. In A. Berger & M. Chi (Eds.), *The making of an international investment facilitation framework: Legal, political and economic perspectives* (pp. 175–209). Cambridge University Press; UNCTAD. (2015). *UNCTAD's Investment Policy Framework For Sustainable Development as a standalone edition since 2015*. https://unctad.org/publication/investment-policy-framework-sustainable-development-2015-edition.

18 "ISDS has been used by investors as a tool to challenge the exercise of regulatory power by host states in the public interest of society, giving rise to a major debate on the legitimacy of the existence of ISDS, which has led to a wave of ISDS reforms." See: Tang, Y. (2022). Investment facilitation for development and the reform of international investment dispute settlement mechanism: The choice of developing countries, *Journal of International Dispute Settlement*, *13*(4), 643–664, p. 647. For a more comprehensive evolution of the IIAs over the past decade, see United Nations Conference on Trade and Development. (n.d.). *International investment agreements*. https://investmentpolicy.unctad.org/publications/series/2/international-investment-agreements

related to sustainable development.

Despite the new IIAs commitments to sustainable development, significant implementation gaps remain. This is so for several reasons. First, many treaties refer to sustainability only in preambles or as general objectives, without integrating it into binding, operational clauses. For instance, while most new IIAs have adopted narrower definitions of protected "investment", very few IIAs include "development" or even "economic development" as a qualifying criterion, let alone "sustainable development".[19]

Nonetheless, some exceptions exist. The Belarus-India BIT of 2018 for example requires a "contribution to the development" of the host State among the criteria for a protected investment.[20] Similarly, the Nigeria-Morocco BIT of 2016 explicitly requires a contribution to the "sustainable development" of the host State.[21] Another example is the African Continental Free Trade Area (AfCFTA) Investment Protocol, which, in addition to referencing the UN SDGs and UNCTAD works in its preamble, directly incorporates sustainable development into the definition of investment. It notes that: "For greater certainty, the investment must have the following characteristics: commitment of capital or other resources, the expectation of gain or profit, a certain duration, assumption of risk, and a significant contribution to the host State's sustainable development."[22] The Protocol further clarifies that sustainable development "embodies the three interdependent and mutually reinforcing pillars that are economic development, social development and environmental protection."[23] Apart from the preamble and the definitions, most new or revised IIAs attempt to safeguard public policy and sustainability-related objectives through carve-outs and general exceptions in a wide range of sensitive sectors.[24] These exceptions may be sector-specific or apply to certain measures within designated sectors.[25]Additionally, most new agreements expressly recognize the State's right to regulate as a pre-existing right. They also affirm that such right is not limited by other clauses in the agreement nor subordinated to investors' expectations. For example, the EU–Singapore Investment Protection Agreement (IPA) clarifies that regulatory changes or the non-renewal of subsidies against investors' expectations do not automatically breach treaty obligations.[26] On the topic of sustainable development, a growing number of IIAs now include, alongside

19 This is understandable though, as it would be particularly hard to measure the contribution of the investment project to the sustainable development of the host country, which may become counterproductive or render the entire treaty futile due to the risk of all investments being excluded from its scope.
20 Article 1.1.4 of the 2018 Belarus–India Bilateral Investment Treaty.
21 Article 1 of the 2016 Nigeria–Morocco Bilateral Investment Treaty.
22 Article 1 of the 2023 African Continental Free Trade Area (AfCFTA) Investment Protocol.
23 *Ibid*.
24 For example, Article 3 of the 2016 Slovakia–United Arab Emirates Bilateral Investment Treaty.
25 For example, Article 9.12.2 of the 2018 Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).
26 Article 2.2 of the 2018 European Union–Singapore Investment Protection Agreement (EU–Singapore IPA). A similar provision is also found in the European Union Model Bilateral Investment Treaty (2023).

general exceptions, detailed provisions on environmental, social, and corporate governance (ESG).[27] These reflect the increasing interest of States and policymakers in the quality, rather than merely the quantity, of inward FDI. This is often expressed through "not lowering of standards" or "non regression" clauses, which explicitly prohibit treaty partners from weakening specific standards to attract FDI. In addition, many IIAs incorporate clauses on corporate social responsibility,[28] combatting corruption, and business and human rights considerations. Finally, more IIAs now contain dedicated provisions on investment facilitation,[29] focusing on transparency, streamlining administrative processes, incentives, cooperation, and technical assistance.

Despite these extensive efforts towards investment facilitation and sustainable development, they still prove insufficient for several reasons, which will be briefly discussed in turn. First, many of these commitments are often viewed as either overreaching or lacking substance due to their non-binding language. Indeed, many provisions are horizontal in nature, i.e. establishing obligations between State parties rather than directly addressing investors' conduct. Additionally, they are typically phrased using terms such as "encourage", "endeavour to", or "strive to", in reference to practices that support sustainable development. As a result, they do not amount to concrete or enforceable obligations on either the State parties or the investors.

Second, even when these clauses are framed in mandatory terms, a key weakness is the absence of enforcement mechanisms, which undermines their effectiveness in cases of non-compliance and renders them potentially hollow.[30] Specifically, many treaties do not allow for counterclaims by the State or fail to broaden the ISDS clause to permit claims from both "disputing parties," i.e., the State and the investor. While both options are permissible under the ICSID Convention, they must be explicitly provided for in the instrument of consent. And since most disputes arise under BITs, in which the State typically offers consent to arbitration but the investor does not, the

27 For a review of some of these provisions in 38 IIAs concluded between January 2018 and December 2020, see Baltag, C., Joshi, R., & Duggal, K. (2023). Recent trends in investment arbitration on the right to regulate, environment, health and corporate social responsibility: Too much or too little?. *ICSID Review – Foreign Investment Law Journal,* 1-41.

28 Piazza, M. (2025, June 19). *Corporate Social Responsibility (CSR)*. In K. A. N. Duggal (Ed.), *Jus Mundi Encyclopedia*. Jus Mundi. https://jusmundi.com/en/document/publication/en-csr; Bueno, N., Vastardis, A. Y., & Ngueuleu Djeuga, I. (2023). Investor human rights and environmental obligations: The need to redesign corporate social responsibility clauses. *Journal of World Investment & Trade, 24*(2), 179–216.

29 See the categorization of investment facilitation provisions and strategies, particularly, the "laissez-faire" and the "patching up" approaches, in Chi, M. (2022). Investment facilitation and sustainable development: Insufficiencies and improvements of ASEAN investment treaties, 612-616. *Journal of International Economic Law, 25*(4), 611–626. See, for example, Australia-United Arab Emirates Comprehensive Economic Partnership Agreement (CEPA) of 2024, Chapter 11 on Investment Facilitation, particularly, Article 11.1 which reads: "The Parties acknowledge that, in addition to the provisions of this Chapter, they have concluded, concurrently with this Agreement, a separate Agreement between the Government of the United Arab Emirates and the Government of Australia on the Promotion and Protection of Investments ("Australia-UAE Investment Agreement")." They further note that this chapter is not subject to the Dispute Settlement Chapter under the Agreement (Art. 11.5).

30 Compare with the effectiveness of trade and sustainable development chapters in EU FTAs. See European Commission. (2017, July 11). *Non-paper of the Commission services on trade and sustainable development chapters in EU free trade agreements*. See also, Androetti, N. (2024), *supra* note 4, 237.

State cannot initiate a claim. To align existing IIAs with sustainability goals, one alternative would be making investors' access to ISDS contingent on demonstrable compliance with the host country's domestic laws, particularly where legality is already a prerequisite for protection. The core issue, though, is that the link to sustainable development remains weak, as the focus tends to be on preserving public policy space rather than ensuring that investments are actively directed towards projects that contribute to sustainable development.

A further obstacle is the tribunals' limited engagement with the notion of "economic development" let alone "sustainable development". To improve this, scholars call for two key shifts. First, tribunals should respect the contracting parties' intent by treating sustainability as an essential element of the investment definition.[31] However, as the review of new IIAs shows, such sustainability-oriented definitions remain exceptional. Second, when sustainability standards are present in IIAs, tribunals should apply a more rigorous and context-specific review process.[32] Without these changes, references to sustainable development in IIAs risk remaining symbolic rather than substantive, despite growing international consensus on their importance.[33] Similarly, another scholar highlights that, although the inclusion of sustainable development in investment dispute resolution is increasingly important, arbitral decisions continue to reflect a notable "disconnection between policymaking and adjudication".[34] And even when tribunals acknowledge the need to balance investment protection with sustainability, their decisions rarely reflect a meaningful integration of the broader international context, in which sustainable development has become a major concern.[35]

Considering these shortcomings, some States have begun to supplement the inclusion of facilitation and sustainability-related provisions in traditional IIAs with standalone IFAs.[36] It raises the question of the extent to which IFAs can support a State's efforts towards achieving the SDGs, particularly given that not all IFAs expressly mandate their pursuit.

3. Potential of IFAs to advance the sustainable development agenda

Given their structure and stated objectives, IFAs mark a notable departure from traditional protection-focused IIAs. IFAs aim to improve the domestic

31 Masumy, N. (2021, December 20). ICSID tribunals fail to address the imbalance between sustainable development principles and investment protections. *Investment Treaty News*. International Institute for Sustainable Development. https://www.iisd.org/itn/2021/12/20/icsid-tribunals-fail-to-address-the-imbalance-between-sustainable-development-principles-and-investment-protections/

32 *Ibid*.

33 *Ibid*.

34 Marcoux, J.-M. (2025), s*upra* note 1, 20–21.

35 Marcoux, J.-M. (2025), s*upra* note 1, 20–21, referring to *Bilcon of Delaware et al. v. Government of Canada*, Award on Jurisdiction and Liability, Dissenting Opinion of Professor Donald McRae, para. 51 (Mar. 17, 2015); UNCTAD. (2024, September 9). *Compensation and damages in investorstate dispute settlement proceedings* (IIA Issues Note No. 1, p. 14). UN Trade and Development. https://unctad.org/system/files/official-document/diaepcbinf2024d3_en.pdf

36 See the "Orientation Shift" approach in Chi, M. (2022), *supra* note 29, 616-618.

business regulatory and administrative environment, thereby enhancing both investor's confidence and development impact. Their flexible and cooperative frameworks enable greater policy coherence and ensure institutional harmonization across governments departments. Compared to traditional IIAs, IFAs offer a less confrontational approach and emphasize the creation of shared value through technical assistance and capacity building, which is crucial for low- and middle-income countries seeking investments that help boost their economic growth and development priorities. Nevertheless, not all IFAs have a strong, explicit focus on sustainable development.

One of the most prominent examples of recently adopted multilateral IFAs is the WTO Investment Facilitation for Development Agreement (IFDA) released in February 2024. The agreement is the result of a multilateral initiative involving about 130 WTO members, including 90 developing and 27 least developed countries (LDCs).[37] Launched in 2017, the agreement seeks to improve the transparency of investment-related measures, simplify and streamline administrative procedures, encourage adoption of international best practices, and provide for technical assistance and capacity-building. Notably, the IFDA does not address issues of market access, investment protection, or ISDS,[38] and explicitly reaffirms members' rights to regulate. The agreement also emphasizes principles of responsible business conduct and anti-corruption, and aims to facilitate investment involving micro, small, and medium-sized enterprises (MSMEs).

However, the agreement has been criticized for several reasons. First and foremost, there is a lack of a clear definition of sustainable investment.[39] But also, for not imposing binding obligations on home States to ensure investors' contribution to SDGs,[40] except for Section VI of the draft which includes measures to be taken by home countries regarding responsible business conduct and corruption. These commitments are nevertheless considered to be of little value as they reiterate existing global standards (e.g., UN Guiding Principles on Business and Human Rights, OECD Guidelines on Multinational Enterprises and the UN Convention on Corruption).[41] This has quickly raised doubts about whether "the investment facilitation obligations that the WTO framework will create" will lead to "the sustainable development that the world needs."[42]

Another notable agreement that has garnered considerable attention is the EU–Angola SIFA, the first EU agreement on investment facilitation,

37 World Trade Organization (WTO). *Investment facilitation for development (IFD) toolkit*. https://www.wto.org/english/tratop_e/invfac_public_e/ifd_toolkit_e.pdf

38 Article 2 and 4 of the WTO IFDA.

39 Calamita, N., Jansen, N., & Schacherer, S. (2022). Investment facilitation for sustainable development within the context of the Regional Comprehensive Economic Partnership, the ASEAN Investment Facilitation Framework and the WTO Draft Investment Facilitation Framework for Development (Studies in Trade, Investment and Innovation, No. 96). https://doi.org/10.2139/ssrn.4639337

40 Fauchald, O. K. (2025), *supra* note 17, pp. 203-204.

41 Fauchald, O. K. (2025), *supra* note 17, p. 205; Calamita, N., et al. (2022), *supra* note 39, pp. 7-8.

42 Calamita, N., et al. (2022), *supra* note 39, pp. 7-8. In the same vein, see Fauchald, O. K. (2025), *supra* note 17.

which came into effect in September 2024, and serves as a pioneering example of this emerging model of sustainable investment governance. The agreement aims to balance FDI facilitation with sustainability goals (Article. 1) through cooperation, transparency, predictability, targeted technical assistance, and respect for the Parties' regulatory space.[43] Indeed, the OECD has recognised the EU's SIFA as closely aligned with its FDI Qualities Review (FDIQR) priorities.[44]

The EU SIFA agreement has a deliberately narrow scope of application, applying only to measures adopted or maintained by Parties that affect investment, without creating or modifying existing rules on investment protection or ISDS (Article. 2). It includes no substantive protections such as fair and equitable treatment or expropriation provisions, though it does feature a limited most-favoured-nation (MFN) clause.[45] Importantly, the agreement reaffirms the Parties' broad right to regulate within their territories to achieve legitimate policy objectives (Article. 2.2), covering a wide range of sectors.[46]

Chapter V, titled "Investment and sustainable development," underscores the balance between encouraging investment and preserving regulatory autonomy. Recalling the ESG components of sustainability, it prohibits lowering environmental or labour standards to attract investment, yet guards against using such standards arbitrarily or as disguised restrictions on investment (Article. 29).

SIFA further recognizes the critical role of technical assistance and capacity building in achieving the objectives of the agreement through a dedicated provision in its Chapter VII. Of a particular note, this agreement stands out in terms of compliance by establishing a Committee on Investment facilitation composed of representatives from both Parties (Article 43), tasked with overseeing implementation and empowered with taking binding decisions by consensus (Article 45), and the possibility of issuing recommendations (Article 45.2).

In terms of wording, SIFA adopts a mix of soft and hard legal language. In several provisions a soft phrasing is used, such as "recognise the negative impact of" (Article 5), "shall endeavour" (Article 23), and "is encouraged" (Article 26), indicating an aspirational model. By contrast, other provisions

43 European Commission. (2024, September 1). *EU's first Sustainable Investment Facilitation Agreement enters into force with Angola* [Press release].https://ec.europa.eu/commission/presscorner/detail/en/ip_24_4462

44 Organisation for Economic Co-operation and Development. (2024). *Towards more sustainable investment frameworks: Evaluating the feasibility of sustainable investment facilitation agreements with Southern Neighbourhood countries*. OECD Publishing. https://doi.org/10.1787/411468b9-en

45 Vaz Pinto, F., & Granadeiro, J. (2024, September 23). The sustainable investment facilitation agreement between the EU and Angola: A new model for investment agreements? *Kluwer Arbitration Blog*.https://arbitrationblog.kluwerarbitration.com/2024/09/23/the-sustainable-investment-facilitation-agreement-between-the-eu-and-angola-a-new-model-for-investment-agreements/

46 Terrinha, L. H. (2025, January 1). The right to regulate in the EU-Angola Sustainable Investment Agreement: What lessons for investment protection? *Kluwer Arbitration Blog*. https://arbitrationblog.kluwerarbitration.com/2025/01/01/the-right-to-regulate-in-the-eu-angola-sustainable-investment-agreement-what-lessons-for-investment-protection/

contain stronger binding language. For instance, Parties "shall not weaken" (Article 29.3), "shall establish" (Article 30.4), and "shall effectively implement" (Article 31.2). Finally, the agreement introduces new terminology aligned with a more cooperative approach to investment governance, notably, the use of "problem-solving mechanisms" (Article 23) instead of the traditional dispute resolution clause. While SIFA may appear to transpose elements of the EU sustainability policies into the international sphere, such reading should be nuanced. Article 29 on the right to regulate expressly affirms each Party's sovereign right to define its *own* sustainable development priorities. This balance indicates that while the EU's normative influence is evident, the agreement preserves flexibility for domestic policy space. In practice, this can be seen positively: it reflects a home State's effort to steer its investors towards sustainability objectives. And since most investors will originate from the EU, SIFA may thus operate as an indirect mechanism to reinforce compliance with the EU's Corporate Sustainability Reporting and Due Diligence Directives, as well as the broader SDGs.[47] This, in turn, strengthens the agreement's capacity to promote sustainable development and may help mitigate the familiar asymmetry between host-State and home-State obligations.

Unlike traditional IIAs, the agreement actively incorporates stakeholders' engagement. Article 26 mandates stakeholders' consultations and periodic reviews, while Article 46 requires an annual dialogue with civil society. Nevertheless, Article 55 clarifies that the agreement does not create direct rights or obligations for individuals or investors within the domestic legal systems of the Parties. In other words, no "person" can invoke or enforce the Agreement directly in Angola's domestic courts or in the courts of any EU Member State.

The agreement finally includes a dedicated chapter on "Dispute avoidance and settlement". In the event of a dispute over interpretation or application, the Parties are obliged to engage in good-faith consultations to reach a mutually agreed solution, with clear timeframes for initiating and responding to requests. The procedure also provides for implementing any agreed resolution. Should consultations fail or the solution not be implemented, the agreement permits inter-state arbitration on a case-by-case basis, while voluntary mediation remains available at any stage as an alternative mechanism.

Overall, recent IFAs demonstrate a gradual but significant shift toward investment governance models that seek to align facilitation with sustainable development. Yet their impact depends heavily on the extent to which sustainability is embedded in their substantive commitments. In this sense,

47 Vaz Pinto, F., & Granadeiro, J. (2024, September 23), *supra* note 45.

the EU-Angola SIFA appears promising, yet it still needs to withstand the implementation test to fully assess its effectiveness. This invites reflection on whether a similar agreement could be replicated in the ASEAN context.

4. EU-Angola SIFA as a blueprint for a potential future agreement with ASEAN and/or its Member States

The EU is positioning itself as a global sustainability frontrunner by leveraging its legal frameworks to promote ESG standards beyond its borders.[48] Its adoption of one of the first major SIFAs clearly reflects this ambition and is already inspiring similar initiatives in Africa,[49] Latin America,[50] and potentially Asia please add space after the period. In the ASEAN context, approximately 88% of the region's total FDI stock is currently covered by investment treaties concluded by ASEAN Member States. Notably, around 85% of this stock falls under "old-generation" IIAs,[51] meaning ASEAN countries' exposure to ISDS is significantly higher than both the global average and that of developing countries overall.[52]

At the same time, Southeast Asia is gradually incorporating facilitation-based clauses into its portfolio of investment instruments. Indeed, ASEAN Member States have included investment facilitation measures in recent agreements, such as the Regional Comprehensive Economic Partnership (RCEP),[53] and adopted the ASEAN Investment Facilitation Framework (AIFF) as a standalone IFA.[54] These instruments emphasize administrative streamlining, transparency, digitalization, and advisory services, among others. However, these provisions remain largely non-binding.[55] While these agreements build upon a long-standing regional approach to cooperation

48 Article 21, including paras. 2(e), 2(f), and 3, of the Treaty on European Union (TEU).

49 The EU has previously announced its plans to conclude similar agreements with other countries in Africa. See, for example, European Commission. *EU-Angola Sustainable Investment Facilitation Agreement (SIFA)*. https://trade.ec.europa.eu/access-to-markets/en/content/eu-angola-sustainable-investment-facilitation-agreement-sifa. It is now known that an EU-Côte d'Ivoire SIFA is being negotiated. European Commission. (2025). *Recommendation for a Council decision authorising the opening of negotiations of a Sustainable Investment Facilitation Agreement between the European Union and the Republic of Côte d'Ivoire* (COM(2025) 192 final). https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52025PC0192

50 An EU-Ecuador SIFA is also in the talks. European Commission. (2025). *Recommendation for a Council decision authorising the opening of negotiations of a Sustainable Investment Facilitation Agreement between the European Union and the Republic of Ecuador* (COM(2025) 427 final). https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52025PC0427

51 Which means those signed prior to 2012. ASEAN Secretariat. (2024). *ASEAN investment report 2024 – ASEAN Economic Community 2025 and foreign direct investment* (p. 76). https://asean.org/wp-content/uploads/2024/10/AIR2024-3.pdf; UNCTAD. (2024, October 30). *International investment agreements trends: The increasing dichotomy between new and old treaties* (IIA Issues Note No. 2, p. 7 and p. 15). UN Trade and Development. https://unctad.org/publication/international-investment-agreements-trends-increasing-dichotomy-between-new-and-old

52 UNCTAD. (2024, October 30), *supra* note 51, p. 7 and p. 15.

53 Regional Comprehensive Economic Partnership (RCEP) Agreement, signed Nov. 15, 2020, entered into force Jan. 1, 2022.

54 ASEAN Investment Facilitation Framework (AIFF). Adopted September 8, 2021.

55 Singh, S. (2023, September 30). What's happening on investment facilitation: A survey of recent global developments. *Investment Treaty News*. International Institute for Sustainable Development. https://www.iisd.org/itn/2023/09/30/whats-happening-on-investment-facilitation-a-survey-of-recent-global-developments/. See also: Calamita, N., et al. (2022), *supra* note 39, p. 7 and pp. 43-59. Chi, M. (2022), *supra* note 29, 624.

in investment governance, they lack clear linkages between investment facilitation and sustainable development.[56]

Given the significant divergence among ASEAN Member States in terms of size, policy orientation, priorities, and level of development, the prospect of a binding region-wide SIFA between ASEAN and the EU appears unlikely in the near future.[57] This is consistent with the decision of the two blocks to pause their trade and investment agreement negotiations in 2009 to focus on bilateral talks.[58] They further acknowledged in 2022 that their positions "remain[ed] too far apart", and thus reoriented the Joint EU-ASEAN Working Group towards sectoral cooperation, particularly in the digital economy, green technologies, and supply-chain resilience.[59]

On the bilateral side, both Singapore[60] and Vietnam[61] have concluded Free Trade Agreements (FTA) and IPAs with the EU.[62] Each FTA includes a chapter on trade and sustainable development (TSD) and a provision dedicated to "Trade and investment favoring sustainable development" which capture many core elements of investment facilitation practices for sustainable development purposes.[63] Indonesia's 2025 Comprehensive Economic Partnership Agreement (CEPA) with the EU similarly includes a "strong sustainability pillar"[64] reflected in its TSD chapter.

Given this context, bilateral investment facilitation-based engagements appear more plausible, particularly with Singapore,[65] Malaysia, Thailand, and Indonesia, given their high scores on the AIFF implementation assessment of investment facilitation measures at the domestic level.[66] Of note, Indonesia,

56 Calamita, N., et al. (2022), *supra* note 39, p. 7 and pp. 43-59; Chi, M. (2022), *supra* note 29, pp. 623-625. The author also pointed out to the absence of investors obligations in particular in terms of combatting corruption and CSR, which further limits the RCEP investment facilitation clause coverage and effectiveness.

57 EU Commission : Association of South East Asian Nations (ASEAN). https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/association-south-east-asian-nations-asean_en. See in this line of thoughts, Calamita, N., et al. (2022), *supra* note 39, pp. 7-8, and Chi, M. (2022), *supra* note 29, 624. That said, the recently adopted Indo-Pacific Economic Framework for Prosperity Agreement Relating to a Clean Economy (IPEF) might offer different aspirations. Signed June 6, 2024, entered into force Oct. 11, 2024, the Agreement is concluded between Australia, Brunei Darussalam, Fiji India, Indonesia, Japan, the Republic of Korea, Malaysia, New Zealand, Philippines, Singapore, Thailand, Vietnam, and the United States of America. Article 3 of the Agreement explicitly recognizes the diversity of the parties' geography and level of development.

58 EU Commission, *supra* note 57.

59 *Ibid*.

60 European Union–Singapore Free Trade Agreement (EUSFTA), Oct. 19, 2018, entered into force Feb. 13, 2019. The EU–Singapore Investment Protection Agreement (IPA) has not yet entered into force yet.

61 European Union–Vietnam Free Trade Agreement (EU–Vietnam FTA), signed June 30, 2019, in force since Aug. 1, 2020. The EU–Vietnam Investment Protection Agreement (IPA) has not yet entered into force. Neither IPAs include specific investment facilitation–like provisions, aside from reaffirming commitments to sustainable development in the Preamble.

62 Negotiations have relaunched with other ASEAN Member States, notably Thailand in 2023, the Philippines in 2024 and Malaysia in 2025. EU Commission, *supra* note 57.

63 EU-Singapore FTA, Chapter 12, and EU–Vietnam FTA, Chapter 13.

64 European Commission. (2025, September 23). *EU and Indonesia conclude negotiations on free trade agreement* [Press release]. https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2168

65 Singapore constitutes a unique case within the investment facilitation landscape. Unlike most economies seeking investment facilitation support, which are typically developing or least-developed countries, Singapore is a high-income, developed economy.

66 ASEAN Secretariat. (2025). *ASEAN investment report 2025 – ASEAN Economic Community 2025 and Foreign Direct Investment*, p. 63, Figure 2.7.

Malaysia, Thailand, and the Philippines are also frontrunners in terms of CRMs and REEs reserves, followed by Vietnam, and, to an extent, in processing capacity, making them strategic candidates for deeper cooperation on sustainable value chains.[67]

SIFAs are one tool among others to facilitate EU investments in ASEAN countries across sustainability-related sectors, while indirectly supporting projects in CRMs and REEs for which the region is particularly well endowed. However, given the already dense landscape of bilateral and sectoral instruments,[68] negotiating a standalone SIFA may not be an immediate priority. Recent US Memoranda of Understanding (MOUs) with Malaysia and Thailand on CRMs[69] further illustrate that major partners increasingly address investments in the digital and green economy, as well as environmental and labor standards, through CRMs deals rather than standalone SIFAs, reflecting the current geopolitical race to secure access to these resources. Against this backdrop, the EU–Angola SIFA offers a practical model for shaping future agreements with ASEAN Member States, with bilateral CRM-focused deals likely representing the next step in advancing sustainable investment cooperation.

Conclusion

Recent developments in international investment policy show a growing emphasis on investment facilitation provisions and agreements. This shift has sparked questions whether such practice is intended to complement or gradually replace traditional investment protection agreements and ISDS. While some scholars have described this trend as the emergence of a more comprehensive investment governance framework, the diversity of agreements often results in a fragmented and complex system: a "noodle bowl" of overlapping rules and standards. [70]

Investment facilitation constitutes only one component of a State's investment policy, alongside liberalization, promotion, and protection. Historically, attention has centered on investment protection through BITs and ISDS. By contrast, investment facilitation has been largely absent or articulated in weak terms. This gap, coupled with limited improvements in domestic business environments, has even contributed to certain ISDS disputes. In response, standalone IFAs have emerged as instruments aimed at addressing elements of the legitimacy crisis of the traditional investment regime and to better engage with SDGs.

67 Ferenczy, A. (2025). *EU–ASEAN cooperation on critical minerals in a new geo-economic era. Expert speak raisina debates.* https://www.orfonline.org/expert-speak/eu-asean-cooperation-on-critical-minerals-in-a-new-geo-economic-era

68 The 2025 CEPA with Indonesia also includes a chapter on "Energy and Raw Materials".

69 See the US' two MOUs concluded with Thailand and Malaysia, respectively, concerning cooperation to diversify global critical minerals supply chains and promote investments, in October 2025.

70 Paine, J. (2025). Beyond Investment Protection and ISDS: Towards an Investment Law Research Agenda Focusing on Investment Facilitation and Liberalization Commitments. *World Trade Review, 24*(3), 387–403. doi:10.1017/S1474745624000569

In terms of legal design, IFAs range from provisions that use soft language to strict, binding commitments, or a combination of both. Yet, most agreements still fall short of fully integrating sustainability in their core provisions. Among those reviewed, only the EU–Angola SIFA stands out, featuring substantive, enforceable commitments that explicitly link investment facilitation with sustainable development. This reflects a broader normative evolution in investment law in which facilitation agreements highlight State autonomy, procedural fairness, and sustainability as core principles. While SIFAs mark an evolution in investment treaty practice, emphasizing cooperation and sustainability, they are not expected to replace the global stock of BITs soon. Rather, they complement them in a shifting landscape of international investment governance. In fact, both the WTO IFD and EU-Angola SIFA explicitly rule out any interaction, modification, or interpretation of existing investment protection agreements. Despite the promising impact of IFAs, the most significant work remains at the domestic level,[71] where national legal frameworks and institutional awareness play a decisive role. Many domestic systems, however, only partially integrate sustainability objectives.[72]

In sum, the emerging practice of IFAs illustrates both the promise and the limits of investment facilitation as a tool to pursue sustainable development. While they hold significant potential to advance the SDGs by improving regulatory environments, enhancing transparency, and fostering cooperation, their impact depends on the explicit integration of sustainability into treaty commitments and on adequate domestic implementation. Conceptually, IFAs mark a departure from the classic investor-rights-driven agreements through their scope and objectives, yet they do not fully recalibrate structural power asymmetries inherent in global investment flows, as the absence of binding investor obligations remain largely intact. These power dynamics may also persist in sustainability-focused IFAs, where one contracting party is likely to be a developed, high-income economy. In this context, CRM-focused deals, crucial for digital and green investments, are gaining momentum amid rising geopolitical tensions. Resource-rich States must therefore manage these opportunities carefully to avoid overexposure to the global race to secure raw minerals supply-chains,[73] and to ensure they are not (inadvertently) drawn into or polarized by the strategic agendas of more advantaged, resource-importing partners.[74] ●

71 Heim, R. (2025, August 15). *Trade in green hydrogen needs more than goodwill: Reflections on Angola's hydrogen deal and the EU–Angola's SIFA agreement. EuropeNow.* https://www.europenowjournal.org/2025/08/15/trade-in-green-hydrogen-needs-more-than-goodwill-reflections-on-angolas-hydrogen-deal-and-the-eu-angolas-sifa-agreement/#_ftnref18

72 Du, J., & Ji, X. (2025). Enhancing the international investment regime: Exploring the WTO agreement on investment facilitation for development, p. 120. *Journal of International Economic Law, 28*(1), 119–127.

73 World Economic Forum. (2025, November 13). From rare earths to antimony: A strategic approach to critical mineral supply. World Economic Forum. https://www.weforum.org/stories/2025/11/rare-earth-antimony-critical-mineral-supply/

74 Cotula, L., & Sasmal, S. (2025, November 12). *Non-Binding Instruments in International Economic Diplomacy: A Look at the US Critical Minerals Deals.* EJIL: Talk! https://www.ejiltalk.org/non-binding-instruments-in-international-economic-diplomacy-a-look-at-the-us-critical-minerals-deals/

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Author Contribution

All authors contributed to the study conception and design. All authors read and approved the final manuscript.

Declarations

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